

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

In the Matter of)
DONALD M. BERMAN,)
formerly an officer of a)
subsidiary of)
Crossland Federal Savings Bank)
Brooklyn, New York)

Re: OTS Order No. NE95-5

Dated: June 5, 1995

STIPULATION AND CONSENT TO ISSUANCE OF CONSENT ORDER

This Stipulation and Consent to Issuance of Consent Order ("Stipulation"), concerning the accompanying CONSENT CEASE-AND-DESIST ORDER (the "Order"), is made by DONALD M. BERMAN, a resident of the State of New York, and is accepted by the OFFICE OF THRIFT SUPERVISION ("OTS"), an office within the United States Department of the Treasury, acting by and through its Regional Director for the Northeast Region.

R E C I T A L S

WHEREAS, DONALD M. BERMAN served as the President of Credit Card Funding, Inc. (the "Bank Subsidiary"), which was a wholly owned subsidiary of Crossland Federal Savings, FSB ("Crossland") of Brooklyn, New York (OTS No. 11496),¹ an OTS-regulated savings association; and

WHEREAS, based on OTS inquiries, the OTS has found, inter alia, that: (i) While DONALD M. BERMAN served as the President of the Bank Subsidiary he also served as an executive officer and a controlling stockholder of Cardholder Management Services ("CMS"),

1. Crossland Federal Savings Bank is the successor-in-interest to Crossland Savings, FSB, which was placed under the control of the Federal Deposit Insurance Corporation as receiver in January 1992. Prior to the receivership, the Bank Subsidiary had been a subsidiary of Crossland Savings, FSB.

a credit card servicing company, which had a contractual relationship with the Bank Subsidiary; (ii) in November 1992, DONALD M. BERMAN, without proper authorization, caused the Bank Subsidiary to disburse \$220,000 to CMS; (iii) in 1993, Crossland discontinued the activities of the Bank Subsidiary; (iv) DONALD M. BERMAN, in response to the demand of Crossland, returned the aforementioned \$220,000 to the Bank Subsidiary in June 1993; and (v) the Bank Subsidiary was deprived of substantial income that could have been earned on the \$220,000, while said funds remained under the control of DONALD M. BERMAN and CMS; and

WHEREAS, based on the foregoing, the OTS is of the opinion that the grounds exist to initiate an administrative proceeding against DONALD M. BERMAN for the issuance of administrative orders, pursuant to provisions of Section 8 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818;² and

WHEREAS, DONALD M. BERMAN desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation with the OTS.

NOW, THEREFORE, DONALD M. BERMAN, without either admitting or denying either that the aforesaid grounds exist or the OTS' factual findings, conclusions and opinions set forth above (except as to the jurisdiction of the OTS which is admitted), hereby stipulates and agrees as follows:

1. Consideration. DONALD M. BERMAN, in view of the foregoing premises and for the purposes of this settlement only, hereby voluntarily enters into this Stipulation and consents to

2. All references to the United States Code ("U.S.C.") in this Stipulation and the Order are to the U.S.C. as amended.

issuance of the Order in consideration for OTS forever releasing and discharging him from all potential administrative claims and charges that have been or might have been asserted by the OTS against him based on his alleged acts and omissions as an officer of the Bank Subsidiary during 1992 and 1993 relative to the Bank Subsidiary's issuance of a \$220,000 check in November 1992, which alleged acts and omissions are described herein.

2. Jurisdiction.

(a) Crossland is and at all material times has been a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4), and an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c). At all material times the Bank Subsidiary was a wholly owned subsidiary of Crossland, and the Bank Subsidiary and its institution-affiliated parties are and have been subject to the OTS' jurisdiction and authority, as provided by Section 8(b)(9) of the FDIA, 12 U.S.C. § 1818(b)(9) (formerly codified at 12 U.S.C. § 1818(b)(8)).

(b) DONALD M. BERMAN served as an officer of the Bank Subsidiary from March 1989 through June 1993, and, therefore is an "institution-affiliated party," as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date of execution hereof.

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" to maintain administrative enforcement proceedings against institution-affiliated parties relative to savings associations

and their subsidiaries, and therefore DONALD M. BERMAN is subject to the authority of the OTS to initiate and maintain administrative proceedings against him pursuant to provisions of Section 8 of the FDIA, 12 U.S.C. § 1818, including but not limited to 12 U.S.C. § 1818(b).

3. Consent. DONALD M. BERMAN consents to the issuance by the OTS of the Order, and agrees to comply with the terms of the Order. DONALD M. BERMAN further stipulates that the Order (including the OTS' issuance thereof) complies with all requirements of law.

4. Finality. The Order is issued by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the OTS (by and through its Regional Director for the Northeast Region), the Order shall be a final order that is effective and fully enforceable by the OTS under provisions of federal law, including Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers. DONALD M. BERMAN, following consultation with his counsel, voluntarily and knowingly waives:

(a) the right to be served with a written notice of the OTS' charges against him, which notice would be issued and served pursuant to 12 U.S.C. § 1818(b) and other applicable law;

(b) the right to an administrative adjudicatory hearing of the OTS' charges against him, which hearing is provided by 12 U.S.C. §§ 1818(b) and 1818(h)(1);

(c) the right to seek judicial review of the Order, including (but not limited to) any such right provided by Section 8(h)(2) of the FDIA, 12 U.S.C. § 1818(h)(2), or otherwise to

challenge the validity of the Order; and

(d) any and all claims for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

6. Indemnification. DONALD M. BERMAN shall neither (i) cause or permit Crossland (or any subsidiary or other affiliate thereof) to incur, directly or indirectly, any expense for any legal (or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor (ii) apply to or obtain any indemnification (or other reimbursement) from Crossland (or any subsidiary or other affiliate thereof) with respect to any such expenses directly or indirectly incurred by him. Any such payments received by or on behalf of DONALD M. BERMAN in connection with this action shall be returned to Crossland.

7. Other Government Actions Not Affected; No Discharge. DONALD M. BERMAN's consent to the issuance by the OTS of the Order is intended solely for purposes of settling and resolving the OTS' claims against him, as provided by Paragraph 1 hereof, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, claims, charges against, or liability of DONALD M. BERMAN that arise in connection with his former position with the Bank Subsidiary, and that may be or have been brought by any government agency or entity other than OTS.

8. Communications and Payment Procedures.

(a) DONALD M. BERMAN shall make his payment of the financial relief, which is required by Paragraph 2 of the Order, by cashier's check, certified check or money order made payable to

the order of Crossland Federal Savings Bank, and he shall submit such payment to the OTS' Enforcement Counsel identified below.

Steven A. Rosenberg, Esq.
Senior Enforcement Counsel
Office of Thrift Supervision
10 Exchange Place, 17th Floor
Jersey City, New Jersey 07302.

(b) The OTS may send written notices to DONALD M. BERMAN care of his counsel:

Daniel G. Gurfein, Esq.
Satterlee Stephens Burke & Burke
230 Park Avenue
New York, New York 10169-0079

(c) Except as otherwise provided by subparagraph (a) hereof, all communications required or permitted to be sent by DONALD M. BERMAN to the OTS shall be sent to:

Angelo A. Vigna, Regional Director
Office of Thrift Supervision
Northeast Regional Office
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

with a copy also sent to the OTS' Regional Counsel for Enforcement at the aforesaid address for the OTS' Northeast Regional Office, or such other addresses as may be the subject of written notice to DONALD M. BERMAN by the OTS.

9. Miscellaneous.

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS' predecessors, successors, and assigns.

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such

headings shall not affect the interpretation of this Stipulation or the Order.

(d) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

(e) The terms of this Stipulation and of the Order may not be amended or modified except by formal written action of the OTS.

WHEREFORE, on this 30th day of May, 1995, DONALD M. BERMAN executes this Stipulation, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

Donald M. Berman
DONALD M. BERMAN

By: Angelo A. Vigna
Angelo A. Vigna
Regional Director, Northeast Region

Date: 6-5, 1995

(5.16)

UNITED STATES OF AMERICA
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In the Matter of)	
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DONALD M. BERMAN,)	OTS Order No. NE95-5
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formerly an officer of a)	Dated: June 5, 1995
subsidiary of)	
Crossland Federal Savings Bank))	
Brooklyn, New York)	
)	

CONSENT CEASE-AND-DESIST ORDER

WHEREAS, from March 1989 until June 1993, DONALD M. BERMAN served as the President of Credit Card Funding, Inc. (the "Bank Subsidiary"), which had been a wholly owned subsidiary of of Crossland Federal Savings Bank ("Crossland"), a federally chartered savings bank maintaining its home office in Brooklyn, New York; and

WHEREAS, in accordance with the Home Owners' Loan Act, the Office of Thrift Supervision ("OTS") regulates, examines and supervises Crossland, the deposits of which are subject to federal deposit insurance pursuant to the Federal Deposit Insurance Act ("FDIA"); and

WHEREAS, based on its investigative findings, the OTS is of the opinion that DONALD M. BERMAN has been an institution-affiliated party of the aforementioned Crossland subsidiary, and while in that capacity engaged in unsafe or unsound practices and breaches of fiduciary duty that resulted in harm to the Bank Subsidiary and Crossland; and

WHEREAS, based on the aforesaid findings, the OTS concludes that the grounds exist for it to seek administrative relief against DONALD M. BERMAN, pursuant to Section 8(b) of the FDIA, 12

U.S.C. § 1818(b);¹ and

WHEREAS, DONALD M. BERMAN, while neither admitting nor denying the above findings, conclusions and opinions of the OTS, for purposes of settling with the OTS has consented and agreed to the OTS' issuance of this CONSENT CEASE-AND-DESIST ORDER ("Order"), pursuant to 12 U.S.C. § 1818(b), by executing on May 30, 1995, the accompanying Stipulation and Consent to Issuance of Consent Order ("Stipulation"); and

WHEREAS, the undersigned OTS Regional Director has been duly delegated the authority to cause the OTS to issue consent orders.

NOW THEREFORE, IT IS ORDERED pursuant to 12 U.S.C. § 1818(b) that:

1. (a) Whenever DONALD M. BERMAN is a director, officer or other institution-affiliated party of a Covered Institution (as defined below and including but not limited to any savings association), he shall fulfill his fiduciary duties to such institution, including but not limited to his fiduciary duty of loyalty. In order to avoid certain situations where his fiduciary duty of loyalty to the Covered Institution is or may be in conflict with his interests in another entity, the following limitation is placed on the activities of DONALD M. BERMAN, pursuant to 12 U.S.C. § 1818(b)(7), until 11:59 p.m. on December 31, 1999: except with the express prior written non-objection of the OTS, DONALD M. BERMAN shall not serve as an officer or employee of any Covered Institution that has a contractual relationship with, or is being provided services by, any

1. All references to the United States Code (U.S.C.) are as amended, except as otherwise specified.

Affiliated Business (as defined below).

(b) For purposes of this Order --

(1) "Covered Institution" refers to any and all of the following: any "insured depository institution" as that term is defined at 12 U.S.C. § 1813(c) (including but not limited to banks and savings associations); any direct or indirect subsidiary of an insured depository institution, whether wholly or partly owned; any "insured credit union" within the meaning of 12 U.S.C. § 1752(7); any "savings and loan holding company" within the meaning of 12 U.S.C. § 1467a(a)(1); any "bank holding company" within the meaning of 12 U.S.C. § 1841; and any direct or indirect subsidiary of any such holding companies, whether wholly or partly owned; and

(2) "Affiliated Business" means any business in which DONALD M. BERMAN is a controlling owner (whether as a stockholder or otherwise, directly or indirectly) or for which he serves as a director, officer, partner or other similar management official.

2. DONALD M. BERMAN, within ten (10) days of the effective date of this Order, shall pay Ten Thousand Dollars (\$10,000.00) to Crossland by delivering to the OTS' Enforcement Counsel a cashier's check, certified check or money order in said amount made payable to the order of CROSSLAND FEDERAL SAVINGS BANK. DONALD M. BERMAN shall send such payment to the OTS' Enforcement Counsel, by a reputable express delivery service or by Certified Mail (return receipt requested), addressed as required by Paragraph 8(a) of the Stipulation.


3. DONALD M. BERMAN shall promptly and appropriately respond

to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

4. The Stipulation is made a part hereof and is incorporated herein by this reference.

5. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. This Order shall remain in effect until it is terminated, modified or suspended, which may occur only by formal written action of the OTS, acting by and through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 
Angelo A. Vigna
Regional Director, Northeast Region

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